IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.334 of 1995
Date of decision:5.12.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

Virsa Singh & Co., Patiala

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), arising out of its order dated 6.4.1993 in ITA No.1134/Chandi/92 relating to assessment year 1990-91:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the orders of the lower authorities holding that the assessee being L-13 licensee is governed by proviso to section 44-AC and, therefore, not liable to collect tax at source?"

The assessee is a dealer in country liquor and holds L-13 licence, as wholesale dealer. The Assessing Officer raised demand against the assessee for failure to collect tax as a whole-seller under section 206-C (6) of the Income Tax Act, 1961 (for short, 'the Act'). The appellate authority upheld the order of the Assessing Officer but the Tribunal

following judgment of this Court in **K.K.Mittal and Co. v. Union of India and others,** (1991) 187 ITR 208, upheld the plea of the assessee that the tax had to be collected by the distillery from whom the assessee had made purchases and the assessee not being first seller, was not liable to deduct tax.

We find that the issue has been gone into by this Court in **Naresh Kumar and Co. and others v. Union of India and others,** (2000) 243 ITR 760 and taking into account Clause a(ii) of Explanation to Section 206-C of the Act, it was inter-alia observed that buyer in further sale of goods obtained in pursuance of sale by way of auction or in any other mode specified in the table, was specifically excluded from the purview of the provision. The assessee being wholesaler purchased liquor for human consumption from the distillery and in that transaction he was the first buyer to acquire the liquor and if the liquor is further sold, the assessee was not liable to deduct tax under section 206-C of the Act. The relevant extract from the Explanation is as under:-

> "(a) 'buyer' means a person who obtained in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include -
>
> (i) xx xx xx
> (ii) a buyer in the further sale of such goods obtained in pursuance of such sale;
> xx xx xx"

After referring to the above explanation, this Court observed:-

> "....The language of clause (a) in the Explanation is clear and unambiguous and the exclusions referred to therein do exclude from the main provision, the subsequent purchasers of country liquor. It is not disputed by the department that the petitioners on the basis of their L-14A licences purchased the country liquor from the wholesalers who are L-13 licensees."

In **K.K.Mittal & Co.'s** case (supra), which has been followed by the Tribunal, this Court concurred with the following observations of the Himachal Pradesh High Court in **Gian Chand Ashok Kumar and Co. v. Union of India,** (1991) 187 ITR 188:-

> "Examination of the fundamental provisions governing the grant of L-13 licences clearly shows that the provisions of sections 44AC and 206C were unduly harsh and arbitrary in their application to cases where the transaction was strictly to be carried out in accordance with specific provisions. It was this mischief which was intended to be eliminated by the new amendment. Otherwise, as calculated by the petitioners, they were to pay much more tax than the expected returns which could not be considered to be the object of the legislation as it originally stood. L-13 licensees appear to be a class which, in view of the existing system of the transaction of sale of country liquor, cannot be considered to be a class evading payment of tax and thus falling under the category of others for whom sections 44AC and 206C were brought into the statute book, history and object and reasons of which we have specifically dealt with quite elaborately in the initial part of this judgment.
>
> The net result of our examination of the matter is that the present petitioners (L-13 licensees) come within the purview of this proviso and the provisions of section 206C and other parts of section 44AC(1) do not apply to buyers covered by the proviso.
>
> The demand of tax at the purchase point from the petitioners by the respondent has no authority of law and they are restrained from doing so."

The matter was again considered by this Court in C**handigarh Distillers and Bottlers Limited v. Union of India and others,** (2002) 253 ITR 205 and view taken in **Gian Chand Ashok Kumar's** case (supra) was reiterated. It was held that judgment of the Hon'ble Supreme Court in **Union of India v. Sanyasi Rao(A).**, (1996) 219 ITR 330 upholding constitutional validity of the provision did not affect its interpretation. This Court also followed Full Bench judgment of the Himachal Pradesh High Court in **Saini and Co. v. Union of India,** (2000) 246 ITR 762 and also referred to judgments of this Court in **KK Mittal and Co. v. Union of India**, (1991) 187 ITR 208 and **Satya Pal Amrik Singh and Co. v. Union of India**, (1997) 228 ITR 653. We also find that the same view has been taken by the Gauhati High Court in **Bikul Das and others v. State of Assam and others,** (1998) 231 ITR 247, following judgment of the Himachal Pradesh

High Court in **Gian Chand Ashok Kumar's** case (supra).

In view of above settled position, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

December 5, 2006
'gs'

(Rajesh Bindal)
Judge